Supreme Court, U.S.
FILED
MAR 10 1992
OFFICE OF THE CLERK

No. 91-1155

In the Supreme Court of the United States

OCTOBER TERM, 1991

JO A. SMITH, ETC., ET AL., PETITIONERS

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

KENNETH W. STARR
Solicitor General

STUART M. GERSON
Assistant Attorney General

FREDDI LIPSTEIN
Attorney

Department of Justice
Washington, D.C. 20530
(202) 514-2217

QUESTION PRESENTED

Whether the courts below correctly held that the United States is not liable under Georgia law and the Federal Tort Claims Act for damages resulting from an airplane crash alleged to have been caused by the negligent overhaul of a private airplane by a private mechanic whose sole connection to the federal government was a certification from the Federal Aviation Administration.

In the Supreme Court of the United States

OCTOBER TERM, 1991

No. 91-1155

JO A. SMITH, ETC., ET AL., PETITIONERS

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINIONS BELOW

The order of the court of appeals (Pet. App. A22) is unpublished, but the judgment is noted at 943 F.2d 1318 (Table). The opinion of the district court is unreported (Pet. App. A10-A21).

JURISDICTION

The judgment of the court of appeals was entered on August 15, 1991. A petition for rehearing was denied on October 17, 1991 (Pet. App. A23-A24). The petition for a writ of certiorari was filed on January 14, 1992. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

1. Pursuant to 49 U.S.C. App. 1421(a)(3), the Federal Aviation Administration (FAA) sets minimum standards for airplane servicing. On August 3, 1987, the FAA took administrative action against John Stroupe, an FAA-certified mechanic employed by a private party, for "failing to use proper maintenance techniques and procedures" and for "making several fraudulent entries in his maintenance log." Pet. App. A13. In September 1987, Stroupe overhauled the engine of a plane owned by John and Linda Goff, for which he issued a certificate of airworthiness on October 1, 1987. *Ibid.* On October 2, 1987, the FAA revoked Stroupe's certification as an airplane mechanic based on the items noted in the August 3, 1987 notice. *Ibid.* On December 6, 1987, the Goffs and two passengers, David Allen Smith and Kelly Jean Laske, were killed in a crash of the plane in Georgia. *Id.* at A12-A13.

2. Petitioners, the personal representatives of David Smith and Kelly Jean Laske, filed suit against the United States in the United States District Court for the Northern District of Georgia, contending that the FAA breached a duty owed to the passengers when the agency failed to revoke Stroupe's certification immediately on August 3, 1987, and that the FAA was negligent when it failed to notify the Goffs that Stroupe's certification had been revoked on October 2, 1987. Pet. App. A5.

The United States filed a motion to dismiss, contending that it owed no duty to petitioners' decedents. Applying Georgia law, the district court agreed and, accordingly, dismissed the case for failure to state a claim. Pet. App. A10-A21. First, it rejected petitioners' claim that the United States owed a duty under the Good Samaritan doctrine, explaining that the

doctrine does not require a defendant to take remedial measures when it does not create the hazardous situation and, alternatively, that petitioners had failed to allege facts showing that the passengers relied on the FAA's actions. *Id.* at A17-A19.

3. The court of appeals affirmed without opinion. Pet. App. A22.

ARGUMENT

Petitioners seek review of the court of appeals' decision affirming a district court judgment that the United States is not liable under Georgia law and the Federal Tort Claims Act, 28 U.S.C. 1346(b), for the death of petitioners' decedents. That decision is correct and does not conflict with any decision of this Court or another court of appeals. The Court recently denied a petition for a writ of certiorari in a related case, filed by the estate of the airplane's owners, that the court of appeals decided on the same day as this case. See *Curtis* v. *United States*, cert. denied, No. 91-780 (Feb. 24, 1992). The arguments that petitioners present here—that the United States is liable based on FAA's alleged violation of its own regulations with respect to airman certification (Pet. 16-32) or based on principles of Georgia tort law (Pet. 32-37) —do not differ in any significant respect from the arguments presented in *Curtis*. We submit that the petition for a writ of certiorari should be denied for the reasons set forth in our brief in opposition in that case.*

---

* We are serving petitioners with copies of our brief in opposition in *Curtis*.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

KENNETH W. STARR
Solicitor General

STUART M. GERSON
Assistant Attorney General

FREDDI LIPSTEIN
Attorney

MARCH 1992

☆ U.S. GOVERNMENT PRINTING OFFICE 1992–312-324/45356